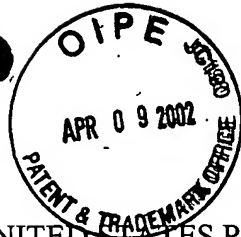


S/N 09/204,013



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A. W. [Signature]
PATENT
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	BALDWIN ET AL.	Examiner:	J. PELHAM
Serial No.:	09/204,013	Group Art Unit:	3742
Filed:	DECEMBER 1, 1998	Docket No.:	8530.318USC1
Title:	THERMAL STORAGE AND TRANSPORT		

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service, as first class mail, with sufficient postage, in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on March 29, 2002.

By: [Signature]
Name: Patricia Cygan

REQUEST FOR RECONSIDERATION

Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

This is in response to the outstanding Office Action mailed on November 29, 2001. The period for response is extended because of the attached petition and extension fee. Reconsideration of the outstanding rejection is requested.

Claims 20-23, 25, 26, and 29-36 stand rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 5,454,471 (*Norvell*), U.S. Patent No. 5,750,962 (*Hyatt*), U.S. Patent No. 4,816,646 (*Solomon et al.*), and U.S. Patent No. 4,806,736 (*Schirico*). This rejection is traversed on the grounds that a *prima facie* case of obviousness has not been established.

Independent claim 20 relates to a method for transporting cooked pizza in a cardboard box. In general, the box, containing the pizza, is placed within a transport case having insulated walls. Within a sub-chamber in the case is placed a thermal storage assembly. The thermal storage assembly includes various features such as a heat retention member, a heating coil, and a power cord. The thermal storage assembly is heated, while positioned within the sub-chamber, through application of alternating current.

The cardboard box containing cooked pizza is positioned within the interior volume of the transport case, either before or after the step of heating the thermal storage assembly within

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the sub-chamber. A delivery person can transport, by the present invention, a box containing a hot pizza.

Norvell describes a container for delivering individual pizzas and large-scale delivery of pizzas. See Figures 1 and 4 of *Norvell*. *Norvell* describes the use of a temperature maintenance device including a sealed packet 80 containing a phase change material 82. See *Norvell* at column 7, lines 21-28. *Norvell* teaches activating the phase change material by placing the temperature maintenance device in a microwave oven. See *Norvell* at column 7, lines 51-63. Once the temperature maintenance device is heated to a desired temperature, the temperature maintenance device is then placed within the food delivery container.

There are at least two features of the invention of claim 20 that are not disclosed or suggested by *Norvell*. These features are described below.

(i) *Norvell* fails to describe a method that includes a step of placing a thermal storage assembly in a sub-chamber wherein the thermal storage assembly comprises a sealed container having a power cord for providing electrical conductivity between a power source and a heating coil provided within the sealed container, wherein the power cord extends into the sealed container. See claim 20, step (b).

(ii) *Norvell* fails to describe a method that includes a step of heating a thermal storage assembly within a sub-chamber by energizing a heating coil by providing alternating current between a power source and the heating coil via a power cord. See claim 20, step (c).

It is submitted that *Hyatt*, *Solomon et al.*, and *Schirico* fail to suggest modifying *Norvell* to correct the above-identified deficiencies in *Norvell*. *Hyatt*, *Solomon et al.*, and *Schirico* describe heating units having a power cord. See *Hyatt* at column 3, lines 28-44, *Solomon et al.* at column 3, lines 5-12, and *Schirico* at column 3, line 60 through column 4, line 3. *Hyatt*, *Solomon et al.*, and *Schirico* fail to suggest replacing the temperature maintenance device described by *Norvell* with a heating unit that can be heated by alternating current, and fail to suggest modifying *Norvell* to provide a temperature maintenance device that can be energized by alternating current while placed in a sub-chamber in the food transport container.

The temperature maintenance device described by *Norvell* at column 7, line 21 through column 8, line 12, and as depicted by Figure 5, is not provided for being powered by alternating current. There is no disclosure by *Norvell* of a power cord that extends outside of the temperature maintenance device for plugging into a power source for alternating current.

2
✓
Furthermore, *Norvell* is focused on providing a temperature maintenance device that can be heated by microwave energy and then placed within the food transport container. See *Norvell* at column 7, lines 51-53. It is submitted that it would go against the teachings of *Norvell* to modify his teachings in a manner that would replace the "sealed packet" described by *Norvell* with a heating assembly having a power cord that would extend outside of the food transport container described by *Norvell*, and would require charging of the heating assembly by plugging the power cord into a power source for alternating current.

X
✓
Norvell describes a method where a "sealed packet" is heated and then placed within the food transport container. In contrast, the presently claimed invention provides for heating a thermal storage assembly within a sub-chamber of a transport case. It is recognized that *Hyatt*, *Solomon et al.*, and *Schirico* describe food delivery containers having heating assemblies therein that can be heated while they are inside the food transport containers. Nevertheless, it is submitted that more than the existence of such structures is required in order to establish a *prima facie* case of obviousness.

MW oven
not needed
✓
It is submitted that insufficient reasons have been provided in the outstanding office action for modifying *Norvell* to achieve the presently claimed invention. According to the outstanding office action, one having ordinary skill in the art would have modified *Norvell* according to *Hyatt* to "allow more convenient heating of the enclosure." It is not understood how substituting the "sealed packet" of *Norvell* with the heating unit of *Hyatt* would have achieved a "more convenient heating of the enclosure" of the food transport container described by *Norvell*. It is submitted that the Examiner is substituting his own concept of "convenience" in place of practical reality. *Norvell* describes a structure that he believes to be convenient. The Examiner's attention is directed to *Norvell* at column 2, lines 63-65, where he states that his invention provides "an apparatus which is relatively easy to construct, use, and transport." Accordingly, the structure *Norvell* believes to be convenient is a "sealed packet" that can be heated in a microwave oven, and then placed in his food transport container. It is submitted that it is inappropriate for the Examiner to substitute his own conclusory statement of "convenience" for *Norvell*'s statement of convenience. In fact, the modification suggested by the outstanding office action is likely to make the food transport container described by *Norvell* to be less convenient, in certain respects, because it would require plugging and unplugging a power cord

from a power source and it would require proximity of the food transport container to a power source.

The outstanding office action further states that *Solomon et al.* and *Schirico* suggest modifying *Norvell* by *Hyatt* "so that the carrier would be immediately ready for use upon heating the heat retention member." It is not understood how *Solomon et al.* or *Schirico* suggest this conclusion drawn by the outstanding office action. *Norvell* already tells one skilled in the art that his food transport container is ready for transporting food once the sealed packets are heated in a microwave oven and then placed inside of his food transport container. It is unclear what, if anything, is added by *Solomon et al.* or *Schirico* to suggest that a modification to *Norvell* would be beneficial to provide a food delivery container that is "immediately ready for use upon heating the heat retention member," as alleged in the outstanding office action.

It is well established law that the Patent and Trademark Office has the burden under §103 to establish a *prima facie* case of obviousness, which it may satisfy only by showing some objective teaching in the prior art, or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of references. In re Fine, 837 F.2d 1071, 1074 (Fed. Cir. 1988). In addition, the "obvious to try" standard is not a legitimate test of patentability, but is an example of an impermissible hindsight reconstruction. Id. at 1075.

It is submitted that the conclusions drawn in the outstanding office action are the result of an impermissible hindsight reconstruction, and that *Hyatt*, *Solomon et al.*, and *Schirico* fail to suggest modifying *Norvell* to achieve a method for transporting cooked pizza in a cardboard box according to the presently claimed invention.

In view of the above comments, withdrawal of the rejection over *Norvell*, *Hyatt*, *Solomon et al.*, and *Schirico* is requested.

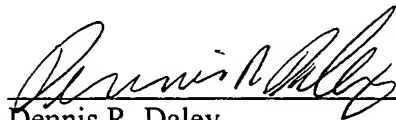
It is believed that this application is in condition for allowance. Early notice to this effect is earnestly solicited.

Respectfully submitted

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Date:

March 29, 2002



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